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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 KYLE BODDY, et al.,

11 Plaintiffs,

12 v.

13 BRENT POURCIAU, et al.,

14 Defendants.

CASE NO. C18-1046JLR

ORDER TO SHOW CAUSE

15 The court has reviewed Defendants Brent Pourciau and Top Velocity, LLC's
16 (collectively, "Defendants") notice of removal (Not. (Dkt. # 1)) and finds that it does not
17 adequately establish the court's subject matter jurisdiction. In addition, the court has
18 reviewed the docket and finds that Defendants' motion to dismiss or transfer (MTD (Dkt.
19 # 8)) may be moot because Plaintiffs Kyle Boddy and Driveline Baseball Enterprises,
20 LLC ("Driveline") (collectively, "Plaintiffs") subsequently filed a second amended
21 complaint (SAC (Dkt. # 10)). The court therefore ORDERS Defendants to show cause
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1 within ten (10) days why the court should not remand this matter for lack of subject
2 matter jurisdiction and why the court should not strike the motion to dismiss as moot.

3 Defendants assert that the court's jurisdiction is based on diversity of citizenship.
4 (Not. at 4.) 28 U.S.C. § 1332 provides that district courts "shall have original jurisdiction
5 of all civil actions where the matter in controversy exceeds the sum or value of
6 \$75,000[.00] . . . and is between citizens of different states." 28 U.S.C. § 1332(a)(1). For
7 purposes of assessing diversity, the court must consider the domicile of all members of a
8 limited liability company ("LLC"). *Johnson v. Columbia Props. Anchorage, LP*, 437
9 F.3d 894, 899 (9th Cir. 2006) ("[A]n LLC is a citizen of every state of which its
10 owners/members are citizens."); *see also* Local Rules W.D. Wash. LCR 101(e).

11 Defendants allege that Mr. Pourciau is domiciled in Louisiana and Mr. Boddy is
12 domiciled in Washington. (Not. at 4.) Defendants further allege that Driveline is a
13 "Washington State [LLC] with its principal place of business in King County,
14 Washington," and that Top Velocity is a "Louisiana [LLC] with its principal place of
15 business in St. Tammany Parish, Louisiana." (*Id.*) Defendants fail, however, to allege
16 the domicile of the LLCs' members (*see id.*), and they cannot establish diversity
17 jurisdiction without doing so, *see Johnson*, 437 F.3d at 899. Thus, the court cannot
18 confirm that it has subject matter jurisdiction. *See* 28 U.S.C. § 1332(a); *see also id.*
19 § 1447(c) ("If at any time before final judgment it appears that the district court lacks
20 subject matter jurisdiction, the case shall be remanded.")

21 Additionally, the court notes that on July 24, 2018, Defendants filed a motion to
22 dismiss or transfer (*see* MTD), and two days later, Plaintiffs filed a second amended

1 complaint (*see* SAC). An amended complaint supersedes the prior complaint and renders
2 the prior complaint without legal effect. *Lacey v. Maricopa Cty.*, 693 F.3d 896, 927 (9th
3 Cir. 2012); *see also Valadez-Lopez v. Chertoff*, 656 F.3d 851, 857 (9th Cir. 2011) (“[I]t is
4 well-established that an amended complaint supersedes the original, the latter being
5 treated thereafter as non-existent.” (quotation marks omitted)). Courts often apply this
6 principle to deny as moot motions to dismiss a complaint that a plaintiff has since
7 amended. *See, e.g., Wagner v. Choice Home Lending*, 266 F.R.D. 354, 360 (D. Ariz.
8 2009) (“As both motions pertain to Plaintiff’s original complaint and Plaintiff has since
9 filed an Amended Complaint, both Motions are now moot.”). Courts may, however,
10 consider a motion to dismiss the prior complaint if the amended complaint suffers from
11 the same deficiencies as the prior complaint. *See, e.g., Jordan v. City of Phila.*, 66 F.
12 Supp. 2d 638, 641 n.1 (E.D. Pa. 1999) (“Since Counts IV through XII of the amended
13 complaint suffer from the same deficiencies that are addressed in defendants’ motion to
14 dismiss, the court will allow the motion to dismiss these counts to be considered as
15 addressing the amended complaint.”).

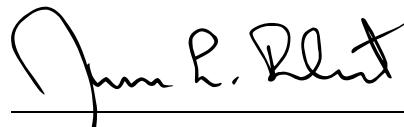
16 However, the fact that the complaint at issue is a second amended complaint
17 complicates the analysis because it is unclear whether Plaintiffs could file the second
18 amended complaint as of right. *See* Fed. R. Civ. P. 15(a)(1). Plaintiffs amended their
19 complaint once before removal (*see* Not.), which courts sometimes treat as the single
20 amendment as of right that Federal Rule of Civil Procedure 15(a)(1) permits, *see*
21 *Manzano v. Metlife Bank N.A.*, No. CIV 2:11651 WBS DAD, 2011 WL 2080249, at *3
22 (E.D. Cal. May 25, 2011) (“Because plaintiff filed her First Amended Complaint in state

1 court prior to removal to this court, plaintiff already amended her pleading once as a
2 matter of course.”); *see also Schnabel v. Lui*, 302 F.3d 1023, 1037 (9th Cir. 2002)
3 (“When a state court action is removed to federal court, the removal is treated as if the
4 original action has been commenced in federal court.”); Fed. R. Civ. P. 15(a)(1). For
5 those reasons, the court orders Defendants to show cause why their motion to dismiss
6 should not be stricken as moot. In responding, Defendants must address the propriety of
7 Plaintiffs’ amendment. However, Defendants may stipulate to the amendment if they do
8 not oppose it. *See* Fed. R. Civ. P. 15(a)(2).

9 In summary, the court ORDERS Defendants to show cause why the court should
10 not remand for lack of subject matter jurisdiction and why the court should not strike the
11 motion to dismiss as moot. Defendants must respond within ten (10) days of the date of
12 this order and limit their response to no more than eight (8) pages. If Defendants
13 fail to respond or otherwise demonstrate subject matter jurisdiction, the court will remand
14 this matter to King County Superior Court.

15 Plaintiffs may, but are not required to, respond by the same date and subject to the
16 same page limitation. If Plaintiffs respond, they must also address the propriety of
17 amendment as of right.

18 Dated this 30th day of July, 2018.

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21 JAMES L. ROBART
22 United States District Judge